IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

JUDGES ORDER NO.418 OF 2006
IN
CHAMBER SUMMONS NO.1117 OF 2005
IN
SUMMONS FOR JUDGMENT NO.552 OF 1996
IN
SUMMARY SUIT NO.3027 OF 1995

The Cotton Market Labour Board of
Greater Bombay, Thane. ...Plaintiff
Vs.
The Cosmos Co-operative Bank Ltd. ...Defendants

Mr.S.R.Ganbarale i/b. Sangramsingh Yadav for Plaintiff

CORAM: SMT. ROSHAN DALVI, J.
DATED: 11TH JANUARY, 2007

P.C.

1. An order came to be passed on 23rd November, 1998 in Summons for Judgment No.552 of 1996 taken out in this Suit for deposit of Rs.55,40,000/- which represented the principal amount in the Suit. Upon such deposit leave to defend was granted. The interest amount claimed by the Plaintiff was not directed to be deposited.

2. The Plaintiffs applied for withdrawal of the amount of Rs.55,40,000/- deposited in the Court. In Chamber Summons No.468 of 1999 an order came to be passed on 7th September, 1999 by Justice Das allowing the withdrawal. There after the Plaintiff took out Chamber Summons No.1117 of 2005 again for permission to withdraw the said sum of Rs.55,40,000/- together with interest earned on the deposit of the said amount from 8th February, 1999.

3. It appears that the amount ordered to be deposited in the Summons for Judgment by the order dated 23rd November, 1998 was deposited in Court on 8th February, 1999 by 2 separate cheques for Rs.699500/- and Rs.48,47,500/-.

4. Despite the order dated 17th September, 1999 the Plaintiff did not withdraw Rs.55,40,000/- and once again applied by a Chamber Summons taken out 6 years thereafter for withdrawal with interest earned on the said deposit.

5. It appears that the deposit of Rs.6,99,500/- came to be invested by the office of this Court. The deposit of Rs.48,47,500/- was not invested.

6. There appears to be a lapse on account of negligence by the Clerks as stated in report submitted by the Prothonotory and Senior Master of this Court in that regard. The Plaintiffs have been allowed to withdraw Rs.55,40,000/- together with the interest earned on the deposit from 8th February, 1999 till the date of the Chambers Summons/ the date of the order on the Chamber Summons dated 13th December, 2005.

7. The Plaintiffs have now taken out this Judge’s Order for payment of interest of Rs.31,08,910/- by the Prothonotory and Senior Master of this Court as per order dated 13th December, 2005. It is contended on behalf of the Plaintiffs that the order dated 13th December, 2005 permits Plaintiffs to withdraw Rs.55,40,000/- together with all the

interest that could have accrued due on the investment of the deposited amount from the date of the deposit. No such thing can be read into the order dated 13th December, 2005. In fact no such thing can be read into prayer (a) of the Chamber Summons No.1117 of 2005 in which the order came to be passed also.

8. The amount of the deposit is ordered to be withdrawn on 7th September, 1999 as well as 13th December, 2005. It is contended that the office of this Court committed the lapse in not investing the deposited amount. However, it is seen that the Plaintiffs also committed lapse in not applying for the withdrawal of the amount deposited despite obtaining order in that behalf. Consequently the claim of the Plaintiff now to interest of Rs.31,08,910/- is misconceived.

9. The Plaintiffs appear to be diligent in making applications for withdrawal of the amount but not diligent in executing the orders which are passed. The order dated 7th September, 1999 is remained unexecuted through the last 6 years.

10. The Plaintiff's Advocate states that the Plaintiffs have received an amount of Rs.62,82,858/- that constitutes complete compliance of the order dated 13th December, 2005. No further amount by way of interest or otherwise need be paid to the Plaintiff by the Office of this Court in this Suit. Application by way of the Judge's Order is rejected.

(SMT. ROSHAN DALVI, J.)